

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

THE HONORABLE RICK PERRY)	
)	
Plaintiff,)	
)	Civil Action No.: 3:11-cv-856-JAG
v.)	
)	
CHARLES JUDD, <i>et al.</i> ,)	
)	
Defendants.)	

**NOTICE OF LIVE TESTIMONY FROM DEFENDANTS
CHARLES JUDD, KIMBERLY BOWERS and DON PALMER**

Charles Judd, Kimberly Bowers and Don Palmer, members of the Virginia State Board of Elections, in their official capacities, (collectively, the “Board”), by counsel, submit this Notice of Live Testimony pursuant to the Court's Order dated December 29, 2011.

The Board intends to call the following witnesses at the hearing on January 13 and expects they will testify as set forth herein.

1. Donald Palmer, Secretary of the State Board of Elections and a defendant herein in his official capacity. Mr. Palmer is expected to testify as follows:

- The Presidential Primary is scheduled for March 6. Two candidates met the statutory requirement of filing 10,000 valid signatures including 400 per Congressional district. In past elections, there were larger slates of candidates who have met the Virginia statutory requirement and were included on the primary ballot.
- It is the duty of the Commonwealth of Virginia to provide at least 45 days for military and overseas voters to vote by absentee ballot under both federal law, state law and a consent decree entered by this Court. This already provides a very tight window for getting ballots printed and mailed. The Board has been working on compliance with

these laws and consent decree. January 9, 2012 had been set as a target date by the Board to have localities complete the preparation for printing of ballots. For the large majority of jurisdictions, it is the last day to add a name to the ballot prior to printing. Should there be any delay in the printing of ballots, or a reprinting, it will be to the detriment of military and overseas voters.

- That there are 134 electoral jurisdictions and each must print its own ballots, which must be approved by its local electoral board and then the State Board of Elections before they can be used. Moreover, there are two large printing companies that are utilized to print the vast majority of ballots in the Commonwealth and that on or around the second week of January is when most approved ballots will be sent to the printers under order for printing and shipping back to the jurisdiction prior to mailing.
- Sending two ballot to voters is not a best practice and should be avoided. The likelihood of confusion that would occur should any voters receive more than one ballot is significant. It will cause confusion to voters and increase the procedural challenges to the election community.
- There would be a significant cost to the Commonwealth and its localities should a second ballot be ordered and reprinted and mailed. There is a sum specific in the Governor's introduced budget to pay for the primary, but it does not include the cost of a possible re-printing of ballots. Should such an order be entered, that cost would have to be paid by the taxpayers of the Commonwealth, whether at the state or local level.
- The harm to the Commonwealth and its citizens should the Plaintiff prevail and that the equities strongly favor the Board.

2. A general registrar, or registrars, from a locality, or localities, in the Commonwealth. The general registrars are charged by Virginia law with conducting the elections under the supervision of the local electoral boards. Defendants intend to present testimony from a general registrar, or registrars, still to be determined, who is or are expected to testify regarding:

- The practical problems that will occur with any delay in conducting the printing of ballots. That ballots for their jurisdictions will have already been printed by the date of the hearing. That printing of these ballots is a complex process that involves computer programming, testing, and certification of the vote counting devices, all of which take time and personnel.
- The number of ballots that have to be printed is significant, and that the costs of the ballots have not always been fully reimbursed by the Commonwealth.
- Should a second ballot be ordered, the significant increased costs that might have to be borne by the locality without a funding source. Moreover, ballot machines would have to be reprogrammed, tested and recertified, which is a complex and costly process.

In addition to the matters set forth above, both witnesses may testify in rebuttal to evidence, if any, put on by the plaintiff.

Respectfully submitted,

CHARLES JUDD, KIMBERLY BOWERS and
DON PALMER, in their official capacities

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of January, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following counsel of record for Plaintiff:

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I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed one copy of the foregoing document by First-Class Mail to the following non-CM/ECF participant:

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